



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0374

Introduced 1/30/2009, by Rep. Arthur L. Turner

SYNOPSIS AS INTRODUCED:

New Act

Creates the Abusive Work Environment Act. Finds that the well-being of the State relies upon healthy employees free of abusive work environments. Defines "abusive conduct" as conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests; and "abusive work environment" as a workplace where an employee is subjected to abusive conduct so severe that it causes physical or psychological harm to the employee. Provides that it is unlawful to subject an employee to an abusive work environment or to retaliate against an employee who acted pursuant to the Act or filed an action or participated in any proceeding under the Act. Provides that an employer is liable for an abusive work environment under its control. Provides that it is an affirmative defense to an abusive work environment action: if the employer exercised reasonable care to prevent and correct abusive conduct and the employee failed to take advantage of those opportunities; or, if the filed action is based upon a negative employment decision that is consistent with the employer's legitimate interests. Provides that a defendant who engaged in abusive conduct or who maintained an unlawful abusive work environment may be enjoined and an order may provide other relief including reinstatement, removal of the offending party from the work environment, lost wages, medical expenses, emotional distress damages, punitive damages, and attorney's fees. Provides that if an employer maintained an abusive work environment that did not result in a negative employment decision, the employer's liability for damages for emotional distress may not exceed \$25,000 and no punitive damages may be awarded. Provides that the Act is enforceable by a civil action filed by an injured employee. Provides that an action may be filed no later than one year after the last act that comprises the unlawful actions. Provides that no provision of the Act shall exempt any person from any liability, duty, or penalty provided by State law or rule. Provides that the Act's remedies are in addition to workers' compensation remedies.

LRB096 03420 AJO 13444 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Abusive Work Environment Act.

6 Section 5. Legislative findings and intent.

7 (a) The General Assembly hereby finds and declares that:

8 (1) the social and economic well-being of the State is
9 reliant upon healthy and productive employees;

10 (2) surveys and studies have documented that between 16
11 and 25% of employees directly experience
12 health-endangering workplace bullying, abuse, and
13 harassment, which is 4 times more prevalent than sexual
14 harassment alone;

15 (3) further studies and surveys have documented that
16 abusive work environments can have severe effects on
17 targeted employees, including feelings of shame and
18 humiliation, stress, loss of sleep, severe anxiety,
19 depression, post-traumatic stress disorder, reduced
20 immunity to infection, stress-related gastrointestinal
21 disorders, hypertension, and pathophysiological changes
22 that increase the risk of cardiovascular diseases;

23 (4) surveys and studies have documented that abusive

1 work environments can have serious consequences for
2 employers, including reduced employee productivity and
3 morale, higher turnover and compensation claims;

4 (5) unless mistreated employees have been subjected to
5 abusive treatment in the workplace for unlawful
6 discriminatory reasons, they are unlikely to have legal
7 recourse to redress such treatment;

8 (6) legal protection from abusive work environments
9 should not be limited to behavior grounded in protected
10 class status as required by employment discrimination
11 statutes; and

12 (7) existing worker's compensation plans and common
13 law tort actions are inadequate to discourage this behavior
14 or provide adequate redress to employees who have been
15 harmed by abusive work environments.

16 (8) to this end, the General Assembly intends:

17 (a) to provide legal redress for employees who have
18 been harmed, psychologically, physically, or
19 economically, by being deliberately subjected to
20 abusive work environments; and

21 (b) to provide legal incentives for employers to
22 prevent and respond to mistreatment of employees at
23 work.

24 Section 10. Definitions. In this Act:

25 "Abusive conduct" means conduct of an employer or employee

1 in the workplace, with malice, that a reasonable person would
2 find hostile, offensive, and unrelated to an employer's
3 legitimate business interests. In considering whether abusive
4 conduct is present, a trier of fact should weigh the severity,
5 nature, and frequency of the conduct. Abusive conduct may
6 include, but is not limited to, repeated infliction of verbal
7 abuse such as the use of derogatory remarks, insults, and
8 epithets; verbal or physical conduct that a reasonable person
9 would find threatening, intimidating, or humiliating; or the
10 gratuitous sabotage or undermining of a person's work
11 performance. A single act normally will not constitute abusive
12 conduct, unless especially severe and egregious.

13 "Abusive work environment" means a workplace where an
14 employee is subjected to abusive conduct that is so severe that
15 it causes physical or psychological harm to the employee.

16 "Conduct" means all forms of behavior, including acts and
17 omissions of acts.

18 "Constructive discharge" means abusive conduct (a) which
19 causes the employee to resign, (b) where, prior to resigning,
20 the employee brings to the employer's attention the existence
21 of the abusive conduct, and (c) the employer fails to take
22 reasonable steps to eliminate the abusive conduct.

23 "Malice" means the desire to see another person suffer
24 psychological, physical, or economic harm, without legitimate
25 cause or justification. Malice may be inferred from the
26 presence of factors such as outward expressions of hostility,

1 harmful conduct inconsistent with an employer's legitimate
2 business interests, a continuation of harmful, illegitimate
3 conduct after the complainant requests that it cease or
4 demonstrates outward signs of emotional or physical distress in
5 the face of the conduct, or attempts to exploit the
6 complainant's known psychological or physical vulnerability.

7 "Negative employment decision" means a termination,
8 constructive discharge, demotion, unfavorable reassignment,
9 refusal to promote, or disciplinary action.

10 "Physical harm" means the material impairment of a person's
11 physical health or bodily integrity, as documented by a
12 competent physician or supported by competent expert evidence
13 at trial.

14 "Psychological harm" means the material impairment of a
15 person's mental health as documented by a competent
16 psychologist, psychiatrist, or psychotherapist, or supported
17 by competent expert evidence at trial.

18 Section 15. Abusive work environment. It is an unlawful
19 employment practice to subject an employee to an abusive work
20 environment.

21 Section 20. Retaliation. It is unlawful to retaliate in any
22 manner against an employee because he or she has opposed any
23 unlawful employment practice under this Act, or because he or
24 she has made a charge, testified, assisted, or participated in

1 any manner in an investigation or proceeding under this Act
2 including, but not limited to, internal proceedings,
3 arbitration and mediation proceedings, and legal actions.

4 Section 25. Employer liability. An employer is vicariously
5 liable for the existence of an abusive work environment within
6 any workplace under its control.

7 Section 30. Defenses. Each of the following subsections is
8 an affirmative defense to a cause of action for an abusive work
9 environment:

10 (a) The employer exercised reasonable care to prevent and
11 promptly correct the abusive conduct which is the basis of such
12 cause of action and the aggrieved employee unreasonably failed
13 to take advantage of appropriate preventive or corrective
14 opportunities provided by the employer. This affirmative
15 defense shall not be available to an employer when the abusive
16 conduct culminates in a negative employment decision with
17 regard to the aggrieved employee.

18 (b) The complaint is grounded primarily upon a negative
19 employment decision made consistent with an employer's
20 legitimate business interests such as a termination or demotion
21 based on an employee's poor performance, or as the complaint is
22 grounded primarily upon an employer's reasonable investigation
23 of potentially illegal or unethical activity.

1 Section 35. Remedies.

2 (a) Where a defendant has been found to have engaged in
3 abusive conduct, or caused or maintained an unlawful abusive
4 work environment, a court may enjoin the defendant from
5 engaging in such illegal activity and may order any other
6 relief that is appropriate including, but not limited to,
7 reinstatement, removal of the offending party from the
8 complainant's work environment, reimbursement for lost wages,
9 medical expenses, compensation for emotional distress,
10 punitive damages, and attorney's fees.

11 (b) Where an employer has been found to have committed an
12 unlawful abusive work environment that did not result in a
13 negative employment decision, the employer's liability for
14 damages for emotional distress may not exceed \$25,000 and the
15 employer may not be liable for punitive damages. The provisions
16 of this subsection do not apply to individually named
17 co-employee defendants.

18 Section 40. Enforcement.

19 (a) The provisions of this Act are enforceable by a civil
20 cause of action commenced by an injured employee.

21 (b) An action commenced under this Act may be commenced no
22 later than one year after the last act that comprises the
23 alleged unlawful employment practice.

24 Section 45. Effect of other laws.

1 (a) No provision of this Act shall be deemed to exempt any
2 person or entity from any liability, duty, or penalty provided
3 by any other State law, rule, or regulation.

4 (b) The remedies of this Act are in addition to remedies
5 available pursuant to the workers' compensation laws. However,
6 a person who believes that he or she has been subjected to an
7 unlawful employment practice under this Act may elect to accept
8 workers' compensation benefits in connection with the
9 underlying behavior in lieu of bringing an action under this
10 Act. A person who elects to accept workers' compensation may
11 not commence a cause of action under this Act for the same
12 underlying behavior.